

1 John S. Delikanakis, Esq.  
2 Nevada Bar No. 5928  
3 Nathan G. Kanute, Esq.  
4 Nevada Bar No. 12413  
5 SNELL & WILMER L.L.P.  
6 50 West Liberty Street, Suite 510  
7 Reno, Nevada 89501-1961  
8 Telephone: 775-785-5440  
9 Facsimile: 775-785-5441  
10 Email: [jwillis@swlaw.com](mailto:jwillis@swlaw.com)  
11 [nkanute@swlaw.com](mailto:nkanute@swlaw.com)

12 *Attorneys for Plaintiff, HSBC Bank USA, National*  
13 *Association as Trustee for Nomura Asset Acceptance*  
14 *Corporation, Mortgage Pass-Through Certificates,*  
15 *Series 2005-AP2*

16 **UNITED STATES DISTRICT COURT**  
17 **DISTRICT OF NEVADA**

18 HSBC BANK USA, NATIONAL  
19 ASSOCIATION as Trustee for Nomura Asset  
20 Acceptance Corporation, Mortgage Pass-  
21 Through Certificates, Series 2005-AP2,

22 Plaintiff,

23 vs.

24 THUNDER PROPERTIES INC., a Nevada  
25 corporation; EAGLE CANYON  
26 ASSOCIATION, a Nevada non-profit  
27 corporation; RED ROCK FINANCIAL  
28 SERVICES, LLC, a Delaware limited-liability  
company,

Defendants.

Case No. 3:16-cv-00467-RCJ-WGC

**STIPULATION AND ORDER STAYING  
DISCOVERY PENDING RESOLUTION  
OF DISPOSITIVE MOTION**

22 HSBC Bank USA, National Association as Trustee for Nomura Asset Acceptance  
23 Corporation, Mortgage Pass-Through Certificates, Series 2005-AP2 (“HSBC”), Thunder  
24 Properties Inc. (“Thunder Properties”), Eagle Canyon Association (the “HOA”), and Red Rock  
25 Financial Services, LLC (“Red Rock”, collectively with HSBC, Thunder Properties, and the  
26 HOA, the “Parties”) hereby stipulate and agree and jointly move this Court to stay discovery  
27 pursuant to Rule 26 of the Federal Rules of Civil Procedure. In support of their request for a stay  
28 of discovery, the Parties show as follows:

**MEMORANDUM OF POINTS AND AUTHORITIES**

**INTRODUCTION**

This Court should stay discovery in this matter pending resolution of HSBC’s Motion for Summary Judgment (the “MSJ”) [ECF No. 31] because it raises potentially dispositive legal questions regarding the constitutionality of NRS § 116.3116 *et seq.* (the “Statute”), which the Ninth Circuit has previously determined is facially unconstitutional. *See Bourne Valley Court Trust v. Wells Fargo Bank, NA*, 832 F.3d 1154 (9th Cir. 2016). Because this case might be disposed of pursuant to the pending motion, discovery is not required at this point in time—instead, any discovery would be burdensome, inefficient, and inequitable at this stage. Therefore, this Court should stay discovery until after a ruling on the MSJ.

**BACKGROUND**

On August 5, 2016, HSBC filed its complaint in this Court against Thunder Properties, the HOA, and Red Rock seeking, among other things, declaratory relief under the Takings and Due Process Clauses of the U.S. Constitution and a determination that HSBC’s security interest remained on the real property commonly known as 840 Alena Way, Sparks, Nevada (the “Property”) despite the foreclosure sale conducted by the HOA. Thunder Properties is the record purchaser of the Property at the HOA foreclosure sale.

Red Rock filed its Answer on November 14, 2016 [ECF No. 12]. Thunder Properties filed its Answer on November 15, 2016 [ECF No. 14]. The HOA filed its Answer on February 22, 2017 [ECF No. 27]. HSBC filed its MSJ on December 15, 2017 [ECF No. 31].

**LEGAL ARGUMENT**

**I. Standard of Review Governing Motions to Stay Discovery**

District courts have “wide discretion in controlling discovery.” *See Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988); *see also Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 601 (D. Nev. 2011) (“The district court has wide discretion in controlling discovery, and its rulings will not be overturned in the absence of a clear abuse of discretion.”). “In evaluating the propriety of an order staying or limiting discovery while a dispositive motion is pending,” courts “consider[]

1 the goal of Rule 1 of the Federal Rules of Civil Procedure [which] directs that the Rules shall ‘be  
2 construed and administered to secure the just, speedy, and inexpensive determination of every  
3 action.’” *Tradebay*, 278 F.R.D. at 602.

4 Indeed, courts may limit discovery “upon a showing of good cause or where ‘justice  
5 requires to protect a party or person from annoyance, embarrassment, oppression, or undue  
6 burden or expense.’” *Id.* at 601 (quoting *Wagh v. Metris Direct, Inc.*, 363 F.3d 821,829 (9th Cir.  
7 2003)). Further, a stay of discovery may be appropriate to “further[] the goal of efficiency for the  
8 court and the litigants.” *Id.* “[W]hen there are no factual issues . . . and the issue[s] before the  
9 Court are purely questions of law that are potentially dispositive,” this Court has approved stays  
10 of discovery. *See id.* at 602. In deciding whether to stay discovery, this Court considers (1)  
11 whether the pending motion is “potentially dispositive of the entire case or at least dispositive of  
12 the issue on which discovery is sought” and (2) whether the “pending potentially dispositive  
13 motion can be decided without additional discovery.” *Id.*

14 This two part test requires the Court to take a “‘preliminary peek’ at the merits of the  
15 potentially dispositive motion to assess whether a stay is warranted.” *Id.* The “preliminary peek  
16 . . . is not intended to prejudge [the potentially dispositive motion’s] outcome”; rather, the  
17 “[C]ourt’s role is to evaluate the propriety of an order staying or limiting discovery with the goal  
18 of accomplishing the objectives of Rule 1.” *Id.* at 603. Thus, for example, this Court has stayed  
19 discovery where it was convinced that no claim for relief could be stated. *See U.S. ex rel. Howard*  
20 *v. Shoshone Paiute Tribes*, Case No. 2:10-cv-01890, 2012 WL 2327676, at \*4 (D. Nev. June 19,  
21 2012) (staying discovery pending resolution of a motion to dismiss on sovereign immunity  
22 grounds); *Pettit v. Pulte Mortg., LLC*, Case No. 2:11-cv-00149, 2011 WL 5546422, at \*5 (D.  
23 Nev. Nov. 14, 2011).

## 24 **II. A Stay Is Appropriate Because the MSJ Could Resolve the Litigation Entirely.<sup>1</sup>**

25 Under the above standard, a stay of discovery is appropriate here because, if granted,  
26 HSBC’s MSJ will dispose of all claims related to HSBC’s challenge of the HOA’s foreclosure  
27

28 <sup>1</sup> Thunder Properties, Red Rock, and the HOA intend to oppose the MSJ. All parties reserve their arguments against the pending motions.

1 sale. Thunder Properties contends that HSBC's interest in the Property was extinguished by the  
2 foreclosure of the HOA lien and HSBC's deed of trust was rendered null, void and unenforceable.  
3 Thunder Properties also contends that, by virtue of its purchase of the Property at the HOA's  
4 foreclosure sale, it became the sole owner of all right, title and interest in the Property free and  
5 clear of any encumbrances of HSBC. In contrast, HSBC argues, among other things, that the  
6 Statute violates the Due Process Clause and Takings Clauses of the U. S. Constitution. If HSBC  
7 prevails on either issue, then the Court may find that the HOA foreclosure sale did not extinguish  
8 the deed of trust, and HSBC will prevail on its claim for declaratory relief. Since the issues  
9 surrounding the HOA foreclosure sale would be nearly the only issues on which discovery would  
10 be necessary, such a ruling would obviate the need for any discovery.

11 As set out in the MSJ, HSBC alleges that the Ninth Circuit has already determined that the  
12 Statute is unconstitutional. *See Bourne Valley*, 832 F.3d 1154. Therefore, under the first prong of  
13 the stay test, HSBC asserts that the fact that the Ninth Circuit has already ruled on this issue in  
14 favor of HSBC's position weighs in favor of granting a stay of discovery to ensure the just,  
15 speedy, and inexpensive determination of this matter. *See U.S. ex rel. Howard*, 2012 WL  
16 2327676, at \*4; *Pettit*, 2011 WL 5546422, at \*5. With respect to this issue, Thunder Properties  
17 does not necessarily agree that discovery will not ultimately be necessary. Specifically, Thunder  
18 Properties asserts that if HSBC received actual notice of the foreclosure proceedings, its right to  
19 due process could not have been violated even if *Bourne Valley* is applied. While prima facie  
20 evidence may exist regarding the notice had by HSBC by virtue of the recitals of the HOA  
21 Foreclosure Deed, discovery may be necessary regarding this issue. With that said, Thunder  
22 Properties recognizes, and HSBC believes, that the Court may hold that actual notice is not  
23 relevant. While Thunder Properties believes that such a holding would be in error, the Parties do  
24 agree, though, that the Court's decision on the MSJ will almost certainly provide guidance  
25 regarding the scope of discovery required. Thus, without waiving any arguments that will be  
26 made in response to HSBC's MSJ, Thunder Properties is agreeable to a stay of discovery pending  
27 a decision on the MSJ.

28 Moreover, the MSJ will satisfy the second prong if the Court determines that actual notice

1 is not relevant to the *Bourne Valley* analysis. As discussed above, Thunder Properties believes  
2 that the evidence disclosed to date indicates that HSBC received actual notice of the foreclosure  
3 proceedings and that its due process rights were thus not violated. HSBC believes that actual  
4 notice is irrelevant to the due process question under *Bourne Valley* since the Statute is facially  
5 unconstitutional. To the extent that the Court agrees with HSBC's position, discovery on this  
6 issue will not be required. The Court's decision on the MSJ will likely provide at the very least  
7 guidance regarding the scope of discovery required.

8 As in *Tradebay, U.S. ex rel Howard*, and *Pettit*, where the Court granted stays of  
9 discovery, the MSJ presents potentially dispositive legal questions that could resolve the dispute  
10 between HSBC, Thunder Properties, Red Rock, and the HOA without discovery. Therefore, it is  
11 "more just to delay or limit discovery and other proceedings to accomplish the inexpensive  
12 determination of th[is] case." See *U.S. ex rel Howard*, 2012 WL 2327676, at \*4.

### 13 CONCLUSION

14 Based on the foregoing, the Parties respectfully request that the Court stay discovery  
15 pending resolution of the MSJ.

16  
17 Dated: January 9, 2018

Dated: January 8, 2018

18 SNELL & WILMER LLP.

LIPSON, NEILSON, COLE, SELTZER &  
GARIN, P.C.

19 By: /s/ Nathan G. Kanute

By: /s/ Megan H. Hummel (with permission)

20 John S. Delikanakis (NV Bar No. 5928)  
21 Nathan G. Kanute (NV Bar No. 12413)  
22 50 West Liberty Street, Suite 510  
23 Reno, Nevada 89501-1961  
24 *Attorneys for Plaintiff, HSBC Bank USA,*  
*National Association as Trustee for*  
*Nomura Asset Acceptance Corporation,*  
*Mortgage Pass-Through Certificates,*  
*Series 2005-AP2*

Kaleb D. Anderson (NV Bar No. 7582)  
Megan H. Hummel (NV Bar No. 12404)  
9900 Covington Cross Drive, Suite 120  
Las Vegas, NV 89144  
*Attorneys for Eagle Canyon Association*

1 Dated: January 8, 2018

Dated: January 8, 2018

2 KOCH & SCOW, LLC

ROGER P. CROTEAU & ASSOCIATES,  
LTD.

3 By: /s/ Steven B. Scow (with permission)  
4 David R. Koch (NV Bar No. 8830)  
5 Steven B. Scow (NV Bar No. 9906)  
6 Brody B. Wight (NV Bar No. 13615)  
7 11500 South Eastern Avenue, Suite 210  
8 Henderson, Nevada 89052  
9 *Attorney for Red Rock Financial*  
10 *Services, LLC*

By: /s/ Timothy E. Rhoda (with permission)  
Roger P. Croteau (NV Bar No. 4958)  
Timothy E. Rhoda (NV Bar No. 7878)  
9120 West Post Road, Suite 100  
Las Vegas, Nevada 89148  
*Attorney for Thunder Properties Inc.*

11  
12 **ORDER**

13 **IT IS ORDERED** that discovery in this matter is stayed until the resolution of HSBC's  
14 Motion for Summary Judgment. If the Motion for Summary Judgment is denied, the Parties shall  
15 submit a revised scheduling order within 30 days after the Court enters an order denying the  
16 Motion for Summary Judgment.

17 

18 WILLIAM G. COBB  
19 UNITED STATES MAGISTRATE JUDGE

20 DATED: January 10, 2018